SUPREME COURT, U. S.

MAR 8 1968

JOHN F. DAVIS, CLERK

NO. 1015

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM C. WITHERSPOON,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS and JOSEPH WOODS, Sheriff of Cook County, Illinois,
Respondents.

MOTION OF OSCAR TURNER FOR LEAVE TO FILE AMICUS CURIAE BRIEF

JOEL W. WESTBROOK
12th Floor Alico Center
Waco, Texas

CHARLES E. WALLACE
Westview National Bank Bldg.
Waco, Texas

Counsel for Applicant
Oscar Turner

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TO THE HONORABLE JUSTICES OF SAID COURT:

The Applicant, Oscar Turner, moves the Court for leave to appear as Amicus Curiae in this cause, and to file a Brief in Support of the Petitioner Witherspoon, and Applicant Oscar Turner would show the Court:

1. Applicant Oscar Turner is vitally interested in the case of Witherspoon vs. Illinois because a judgment favorable to the

[1] While the Petitioner has consented to the filing of this Brief, the Attorney General of Illinois has not.

Petitioner Witherspoon will necessarily result in a reversal of the death penalty judgment which has heretofore been adjudged against the Applicant in the 54th District Court of McLennan County, Texas. Your Applicant was there convicted and adjudged the death penalty on January 24, 1968, as the result of a verdict by a jury selected, over the Applicant's objections, by a selection procedure which eliminated as eligible jurors all veniremen expressing conscientious scruples against the imposition of the death penalty, in response to questions by State's counsel.

2. (a) Applicant would urge upon the Court facts and questions of law which would not be adequately presented by Petitioner, who is not a Negro.

(b) These are: The Applicant Oscar Turner is a Negro, and he was convicted of the murder of two white men and assessed the death penalty by an all white jury, designedly selected by the State to eliminate from the trfal jury all Negroes. The death penalty disqualification under the facts and circumstances of the jury's selection was a significant and decisive instrument in this design. This design, and the trial and judgment resulting from this design, violates the Defendant's rights under the Constitution of the United States, Article V, Article VI and Article XIV, in that he was denied due process of law, and denied the trial by a fair and impartial jury, was denied the equal

protection of the laws, and suffered discrimination by reason of his color.

3. Clearly Applicant's position is relevant to the disposition of the main cause. If, as the Applicant contends, disqualification of veniremen because of conscientious scruples against the death penalty is an instrument which tends to produce all white jurors in capital trials of Negro defendants, then there are compelling constitutional reasons for removing this discriminatory instrument from the employment of the prosecution in the selection of trial juries.

4. This Motion is supported by the attached Affidavit of Joel W. Westbrook.

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Waco, Texas

CHARLES E. WALLACE
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Waco, Texas

Counsel for Applicant
Oscar Turner

THE STATE OF TEXAS)
)
COUNTY OF McLENNAN)

AFFIDAVIT

Joel W. Westbrook, being sworn, states:

1. He is, together with Charles E. Wallace, Esq., court appointed counsel for the Applicant Oscar Turner for both the trial of the case in the 54th District Court of McLennan County, Texas, and for the appeal from the judgment of that Court.

2. The record of the trial, the selection of the trial jury, the pre-trial sanity hearing and jury selection, and the pre-trial hearing, as well as the instruments on file, has not been prepared, although it is in the process of being prepared.

3. Attached to the Brief which your Applicant asks leave to file is an Appendix, which consists of an Affidavit, sworn to by counsel, respecting relevant proceedings in State vs. Oscar Turner.

JOEL W. WESTBROOK

SUBSCRIBED AND SWORN TO BEFORE ME THIS THE DAY OF , 1968.

Notary Public in and for McLennan County, Texas